



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP-174863

PRELIMINARY RECITALS

Pursuant to a petition filed June 9, 2016, under Wis. Admin. Code, §HA 3.05(1), to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on July 12, 2016, at Milwaukee, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether the agency correctly determined an FS overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 5, 2016 the Division of Hearings and Appeals issued a decision finding that petitioner committed an intentional program violation (IPV) by trafficking \$199 in FS at John Henry Distribution on July 8, 2012, case no. FOF-172874. Notices of the IPV, the IPV hearing, and the decision were sent to petitioner's current address.

3. On May 9, 2016 the agency sent petitioner a notice informing her that she was overpaid \$199 in FS in July, 2012 due to trafficking misuse, claim no. [REDACTED]. The notice was sent to the same address. Petitioner received the notice and filed this appeal.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). In addition, claims arising from FS trafficking-related offenses shall be recovered in the value of the trafficked benefits. 7 C.F.R. §273.18(c)(2). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

The definition of “trafficking” includes the following at 7 C.F.R. §271.2: “(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.”

In case no. FOF-172874 the agency established that petitioner trafficked FS in the amount of \$199 by exchanging FS for cash. Therefore the overpayment notice was issued correctly; the result of the IPV decision mandated that petitioner was overpaid the value of the trafficked benefits.

Petitioner testified that she knew nothing about the IPV case. She stated that she received none of the IPV mailings, only the overpayment and disqualification notices. There is a procedure in the IPV rules allowing for the IPV case to be reopened if the person claims good cause for not receiving the notice of the IPV hearing. The claim must be made within 30 days of the IPV decision.

Petitioner filed this appeal 35 days after the IPV decision. Furthermore, it would be difficult to find good cause when the IPV materials were sent to the same address as the overpayment notice that petitioner did receive.

I conclude that the agency correctly determined the FS overpayment.

CONCLUSIONS OF LAW

Petitioner was overpaid \$199 in FS based upon an IPV finding that she trafficked that amount in July, 2012.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 13th day of July, 2016

\s _____
Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 13, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability